

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8098 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATIYA BHASHA SHIKSHA SANSTHAN TRUST

Versus

KRISHNADIN SHIVRATAN

Appearance:

MR BHARAT T RAO for Petitioners

MR RK MISHRA for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/03/98

ORAL JUDGEMENT

This petition arises of the judgment and order dated 28th February, 1993 passed by the Gujarat Primary Education Tribunal in Application NO. 74 of 1991. The petitioners before this Court are the public trust and managing trustee of the said trust and the manager of Sanjay Gandhi Primary School established and administered by the said trust (hereinafter referred to as "the employer"). Respondent No. 1 is a primary teacher who

was serving in the Sanjay Gandhi Primary School and who is alleged to have resigned from service on 31st December, 1990 (hereinafter referred to as "the teacher"). Respondent No. 2 is the Administrative Officer under the Bombay Primary Education Act, 1947 (hereinafter referred to as "the Act").

It appears that the teacher was employed by the trust as watchman in its secondary school since 1974. In 1984, primary school was established and the teacher was appointed as primary teacher on a consolidated pay. It appears that on account of polio suffered by the infant son of the teacher, he could not attend to the service for some time regularly and the teacher was not paid the salary for that period. Feeling aggrieved, the teacher approached the Gujarat Primary Education Tribunal by filing application no. 74 of 1991. It was the claim of the teacher that apart from academic duties, the teacher was made to perform certain administrative duties. In view of the handicap suffered by his infant son, he had to take his son for physiotherapy and he could not attend to the administrative duties imposed upon him. He, however, performed his academic duties regularly. The employer, however, refused to pay his salary unless he performed administrative duties also. He, therefore, prayed for a direction to the employer to pay salary to the teacher regularly every month.

Application was contested by the employer. The employer contended that the employer was a minority institution and all the provisions of the Act did not apply to it. It was exempt from application of the provisions contained in sections 40B, 40C and also Schedule-F to the Act. It further contended that the teacher had resigned from service. He tendered resignation on 19th December, 1990 and the same had become effective from 1st January, 1991 and that the teacher was paid salary upto December, 1990.

The Tribunal, under its order dated 19th September, 1991, made an interim order directing the employer not to restrain the teacher from performing his duties and to pay him his salary regularly. The said order was challenged before this Court in Special Civil Application No. 7902 of 1991. This Court did not entertain the said petition. However, directed the tribunal to dispose off the application pending before it expeditiously. The tribunal, thereafter, disposed off the said application on 28th February, 1993 as recorded hereinabove. Thus, pending the application before the tribunal, interim order made on 19th September, 1991

remained operative. However, I am told that the said order has not been complied with and the teacher has not been permitted to join duty. In course of trial before the tribunal, the teacher adduced oral evidence and contended that he was made to write the resignation letter in the year 1984. He was given an understanding that if he writes such a resignation, in future, as and when the occasion arises, he can be given appointment as a peon in the secondary school run by the employer. He denied the factum of his giving resignation on 19th December, 1990 as alleged. The Tribunal held that the employer was not a minority institution and it was, therefore, not exempted from application of the provisions made in section 40C of the Act. The employer, therefore, was required to follow the procedure prescribed in the said section failing which the acceptance of resignation by the employer would be ineffective in the eye of law. The employer, therefore, was directed to reinstate the teacher with full back wages. The tribunal did not grant teacher's prayer for parity of pay. Feeling aggrieved by the said order, the employer preferred review application before the tribunal which too was rejected on 30th June, 1993. Feeling aggrieved, the employer has preferred present petition before this Court.

Section 40C of the Act, inter-alia, provides that if a teacher desires to tender his resignation, he shall tender the same in person to the administrative officer of the school board and it enjoins upon the manager not to accept the resignation of a teacher unless it is tendered and is forwarded to the manager by the administrative officer. It further provides that the acceptance of any resignation tendered in contravention of the said section shall be ineffective. Thus, the provisions made in section 40C of the Act are mandatory. Section 40H of the Act exempts recognized private primary school established and administered by a minority institution, inter alia, from the application of the provisions of section 40C of the Act. In view of the exemption granted under section 40H of the Act, institution established and administered by a minority is not bound to follow the procedure provided for under section 40C of the Act.

Mr. Rao, the learned advocate appearing for the employer has submitted that the learned tribunal has erred in holding that the petitioner No. 1 was not a minority institution. He has submitted that the secondary school established and administered by the petitioner No. 1 has been held to be a minority

institution and a certificate to that effect has been issued by the Government. He has, therefore, submitted that even the primary school established and administered by petitioner No. 1 should necessarily be considered to be a minority institution. He has also relied upon the report of the Minorities Commission. He has submitted that the guidelines set out in the said report are required to be followed while determining the status of an institution. He has submitted that in view of the said guidelines, the petitioner No. 1 is undoubtedly a minority institution and is exempted from the rigours of section 40C of the Act. He has submitted that the employer had validly accepted the resignation voluntarily tendered by the teacher and there was no reason either to order reinstatement of the teacher or to pay him back wages. Mr. Rao has also submitted that even if it is held that the acceptance of resignation tendered by the teacher was illegal in any manner, the teacher being an untrained teacher, could not have been directed to be reinstated in service. In support of his arguments, he has relied upon the judgments of this Court in the matters of *Firdaus Amrut Higher Secondary School, Ahmedabad v. M.M.Dave & Ors.* [1992 (2) GLR 714]; and *Benson Knock Semual v. State of Gujarat and Ors.* [1984 (1) GLR 691]; and of Supreme Court in the matter of *Ram Sukh and others v. State of Rajasthan and others* [AIR 1990 SC 592]. In the matter of *Firdaus Amrut Higher Secondary School*, (supra), the Court while determining whether the petitioner school was a minority institution or not, relied upon the guidelines issued by the Minorities Commission. In paragraph 9 of the judgment, the Court held that;

"In order to decide the status of the institution

a large number of factors are required to be considered. It is hazardous and unsafe to deny the benefit of minority institution to an educational institution based on one factor alone. The very purpose of fundamental right to establish and administer the educational institution of the choice of linguistic or religious minority will be frustrated if a lopsided view of the facts is taken and just constitutional benefit is denied to the institution by referring to or relying upon one factor alone disregarding all other relevant and material factors. "

The factors which require be taken into consideration have been enumerated by the Minorities Commission. First, the institution must be established

and administered by a religious or linguistic minority. It need not have been established to conserve its languages, script or culture. Second, the constitution of the governing body of such institution should provide for an effective majority to the members of the minority community. Third, it shall have freedom to give special consideration to the students of its own community in the matters of admission.

It is, therefore, necessary to peruse the constitution of the petitioner no. 1 trust for determining whether it can be said to be an institution established and administered by a minority. The employer claims to be a linguistic minority. The Sanjay Gandhi Primary School has been established by the petitioner No. 1 Trust. The trust has been settled in favour of Rajnathsinh Shastri, Smt. Nirmala Shastri and Kesardas Gangadas. All the three appear to be belonging to a Hindi speaking minority. The objects of the trust are (a) to establish and administer the educational institution; (b) to impart education of different levels like pre-primary, primary, middle and higher education in Arts, Science, technical training and educational training, sewing, typing etc; (c) to arrange for linguistic research in all regional languages of India; (d) to establish and develop Sanskrit Vidyapith; (e) to establish public library; (f) to establish hostels for the students; (g) to provide separate educational facilities to physically handicapped people; to impart education, according to the local necessity, in Hindi, English, Gujarati, etc. medium. It further provides that on resignation, death or incapacity of any of the trustees, the remaining trustees named therein shall appoint a trustee on the vacant post from amongst the family members of the existing trustees.

Upon perusal of the above objects of the trust, I am of the view that the petitioner No. 1 trust is a family controlled trust and the trustees happen to belong to Hindi speaking community; the trust cannot be said to have been established for promotion and development of its own language or culture nor it is established for the benefit of its own community. On the contrary, the medium of instruction is chosen on the basis of local need. Sanjay Gandhi Primary School has undoubtedly been established to cater to the local need irrespective of the community or the language.

Article 30 of the Constitution of India confers upon the minorities, whether based on religion or language, a right to establish and administer educational

institutions of their choice. The question would be whether the educational institution established by the member/s of a minority community would, by itself, become minority institution. The question is answered by the High Court of Andhra Pradesh in the matter of Chikkala Samuel v. District Educational Officer [AIR 1982 AP 64]. In paragraph 5 of the judgment, (at page 68), the Court held thus;

"It should be remembered that it is not necessary that the minority community as such should establish the institution, it is open even to a single member of a minority community to establish and maintain an educational institution [see State of Kerala v. Mother Provinciala, AIR 1970 SC 2079 (at page 2082)], but it should not be forgotten that such educational institution must, in some manner, serve or promote the interests of the minority. It should be shown that the minority concerned, or a considerable section thereof, is benefited by that institution. Otherwise, there would be no nexus between the institution and the minority as such.It is not a minority institution but an institution belonging to an individual who happens to belong to minority community."

Similarly, in the matter of Kalpana Bishui v. The State of West Bengal [1981 LAB 7 I.C. 1622], the High Court of Calcutta held that the Victoria institute which was established by a trust for promotion of education of girls of Indian parentage cannot be said to be an educational institution established and administered by a religious minority known as "Brahmasect". Thus, though it is not a legal requirement that the institution be established by a minority community or that it shall conserve, promote or develop religion, language, art or culture of the minority, or that it should impart education to the children of minority community alone, the educational institution must, in some manner, serve or promote the interests of the minority.

In the matter of Benson knock Samuel (supra), the Court was not called upon to determine the status of an institution as to whether it was established and administered by minority or not. The said judgment, therefore, does not lend support to the case of the petitioner.

As observed hereinbefore, the petitioner No. 1 Trust has not been established for the benefit of

minority to which its trustees belong. Sanjay Gandhi Primary School, therefore, cannot be held to be a school established and administered by minority. The employer, therefore, is bound by all the provisions of the Act including section 40C of the Act. It is not disputed that the resignation of the teacher was not tendered before the administrative officer of the school board i.e. respondent No. 2 herein nor was it forwarded by respondent No. 2. In the circumstances, acceptance of the said resignation by the employer cannot be held to be legal and valid and the said resignation is, therefore, ineffective. The teacher is, therefore, required to be reinstated in service. In the matter of Ram Sukh and others, (supra), the Court was examining the termination of service of untrained teachers on completion of tenure of their appointment. The Court accepted the petitioners' plea that they be given facility to undergo prescribed training. The Court, however, held that it could not direct the Government to put back the petitioners in service till they are trained. In my view, said judgment has no applicability on the facts of the present case. Said judgment does not lay down universal proposition that no untrained teacher can ever be reinstated in service. In the matter before the Supreme Court, the untrained teachers were appointed on a temporary basis for a fixed tenure and on completion of the said tenure, they stood relieved from service.

The next question that requires consideration is whether the teacher should be paid the back wages as ordered by the tribunal. Copy of the resignation tendered by the teacher has been produced by Mr. Rao. The teacher has admitted his writing in the said resignation. However, he has contended that he was made to write the said resignation as far back as in the year 1984. The contention does not appear to be true. The teacher while signing the said resignation has also put date thereunder i.e. that of 19.12.1990. It is evident that the date has been entered by the same hand, in the same ink and at the same time. It, therefore, appears that the teacher did tender resignation on 19th December, 1990. It is also apparent that the teacher has been out of job since January, 1991. I am, therefore, of the view that the employer shall not be made to pay idle wages to the teacher. The employer believed itself to be a minority institution and, therefore, under bonafide belief that the provisions of section 40C of the Act did not apply to it, accepted the resignation tendered by the teacher. At the same time, I cannot approve the action of the employer in not complying with the interim order

made by the Tribunal. The employer, therefore, shall pay the wages to the teacher for the period from the date of the interim order made by the tribunal i.e. from 19th September, 1991 till this Court made ad-interim order on 16th August, 1993.

Mr. Rao has not raised any other contention before me. Petition is, therefore, dismissed. Petitioners are directed to reinstate respondent No. 1 in service as untrained primary teacher in Sanjay Gandhi Primary School within fifteen days from the date of the receipt of copy of this order. The petitioner shall also pay to the respondent No. 1 salary for the period from 20th September, 1991 till 15th August, 1993. Such salary shall be paid within a period of two months from today. The respondent No. 1 shall be treated as on duty from the date of his resignation till 15th August, 1993. Absence of the respondent No. 1 from service from 16th August, 1993 till the date of his reinstatement shall be treated as period spent on extraordinary leave without pay. Petitioners shall pay costs of this petition. Rule is discharged. Interim relief is vacated.

Vyas